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13 AVAYA LLC, formerly known as AVAYA INC.

14 [Additional counsel listed on signature page]

15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN FRANCISCO DIVISION**

18 AVAYA INC., a Delaware corporation,

19 Case No. 3:19-cv-00565 SI

20 Plaintiff,

21 **UPDATED JOINT CASE MANAGEMENT
22 STATEMENT**

23 v.

24 RAYMOND BRADLEY PEARCE, et al.,

25 Defendants.

26

27

28

29 Judge: Hon. Susan Illston

30 Date: June 16, 2023

31 Time: 3 p.m.

32 Place: Zoom

33 **LAW OFFICES
34 & BANCROFT LLP
35 ONE EMBARCADERO CENTER, 22ND FLOOR
36 SAN FRANCISCO, CALIFORNIA 94111-3711**

1 Plaintiff AVAYA LLC formerly known as AVAYA INC. (“Avaya” or “Plaintiff”),
 2 Defendants FEATURECOM INC. and STEVE GERACI (together “Featurecom”), and Cross-
 3 Complainant METROLINE INC. jointly submit this update to the Court, consistent with Court’s
 4 Minute Entry following the February 10, 2023 case management conference, ECF No. 372.^{1, 2}

5 **I. UPDATE RE RELATED CRIMINAL ACTION**

6 As discussed at the prior case management conferences, Defendant Pearce, his spouse,
 7 Dusti Pearce, as well as Defendant Jason Hines, have all been criminally charged in the United
 8 States District Court for the Western District of Oklahoma, Case No. CR 22-258 J (the “Criminal
 9 Action”). As expected, the charges set forth in the Indictment are similar to the allegations made
 10 in the Complaints filed by Avaya in the current civil action pending before Your Honor (the “Civil
 11 Action”). Recently, the Criminal Defendants jointly requested a continuance of the trial by two
 12 months. The Court granted the continuance and therefore the trial in the Criminal Action has been
 13 reset for July 11, 2023. Avaya’s understanding is that plea agreement discussions are ongoing.

14 **II. UPDATE RE STATUS OF CIVIL ACTION**

15 Statement from Avaya: Since the last case management conference, Avaya and
 16 Featurecom have reached a settlement. ECF No. 380. Avaya and Featurecom expect to file a
 17 stipulated injunction and voluntary dismissal with prejudice, in a form substantially similar to
 18 those entered as to other defendants, within the next 30 days.

19 As to Defendant Atlas, Atlas’ counsel moved to withdraw on April 9, 2023, which was
 20 heard this morning, June 9, 2023. ECF No. 377. Atlas has not substituted in new counsel.
 21 Instead, Atlas filed for bankruptcy and provided notice of the stay to the Court and the Parties on
 22 or about April 10, 2023. ECF No. 379. Without prejudice to proceeding further or later against
 23 Atlas in this Action, Avaya is currently seeking relief in the context of Atlas’ bankruptcy action,

24
 25 ¹ Defendants Jason Hines, DBSI, U.S. Voice, and Atlas Systems Inc. did not respond to requests
 26 for input or additions to this update as of the time of this e-filing, so have not been included in this
 27 update.
 28 ² Certain defendants have been intentionally omitted from the Statement, including Defendants
 Pearce, Sharkfish Corp., and Telcom International Trading Pte. Ltd., which never responded to the
 complaint and as to which defaults have been entered by the clerk of the Court.

1 and has further, at a minimum, reserved the right in Atlas' bankruptcy to petition this Court to
2 order permanent injunctive relief against Atlas to the extent such an order is not entered in Atlas'
3 bankruptcy action.

4 As to Defendants Hines/DBSI/U.S. Voice, Mr. Hines has appeared *pro se* for himself in
5 this Action. Although Avaya has interfaced with counsel for Mr. Hines over the past three
6 months, no counsel has actually appeared on behalf of DBSI or U.S. Voice, despite both the
7 Court's warning to Mr. Hines and the warning letter sent by their prior counsel, Mr. Bledsoe, that
8 Mr. Hines needed to obtain counsel for his companies. ECF No. 373. Mr. Hines has also
9 attempted to serve discovery responses *pro se* on behalf of DBSI and U.S. Voice, which are
10 invalid and constitute admissions to the requests, and in any event, Mr. Hines has also taken the
11 Fifth both in his discovery responses and as to all questions at his deposition on May 5, 2023.
12 Accordingly, Mr. Hines has taken the Fifth on every matter in dispute and DBSI and U.S. Voice
13 have failed to defend themselves, as set forth in Fed. R. Civ. Proc. 55, by failing to secure new
14 counsel. At a minimum, Avaya respectfully submits that DBSI and U.S. Voice should have their
15 answers stricken and have default judgment entered at this point.

16 As to the defaulting defendants referred to in Footnote No. 2, Avaya intends to move for
17 default judgment once the Action has been resolved as to the remaining defendants.

25 DATED: June 9, 2023 WILSON ELSER MOSKOWITZ EDELMAN &
26 DICKER LLP
27 By: /s/ Arman Nafisi
28 Arman Nafisi
Attorney for Defendants
FEATURECOM INC. AND STEVE GERACI

1 DATED: June 9, 2023

2 MZF Law Firm

3 By: /s/ Mateo Fowler
4 Mateo Fowler
5 Attorney for Cross-Complainants
6 METROLINE INC.
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1 **ATTESTATION**

2 Under Civil Local Rule 5-1(h)(3), I hereby attest under penalty of perjury that the
3 concurrence in the filing of this document has been obtained from the signatories above.

4 Respectfully submitted,

5 DATED: June 9, 2023

SIDEMAN & BANCROFT LLP

6 By: /s/ Zachary J. Alinder

7 Zachary J. Alinder

8 Attorneys for Plaintiff

9 Avaya LLC, formerly known and Avaya Inc.

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